subsequently by the purchaser, on account of the requirements of the statute that the real facts be made a matter of public record and that the real parties in interest must appear therein.

MALICIOUSLY INDUCING A BREACH OF CONTRACT—LUMLEY V. GYE.—Plaintiffs with seventy-three other companies were members of a Coal Owners' Association, operating some two hundred collieries, and employing over 100,000 men in South Wales. The defendants were the South Wales Miners' Federation, an association registered under the English Friendly Societies Act; the trustees of the federation, who were joined for the purpose of reaching the federation funds of over £100,000 if judgment was recovered; the vice-president, treasurer, and secretary of the federation; and six members of the workmen's half of a "*Sliding Scale Committee.*"

For twenty years or more the employers and the employees had operated the mines under contracts wherein the wages were fixed by a sliding scale, depending upon the selling price of coal. In the vicinity were many coal dealers, or merchants, who bought and sold coal to the trade, and whose interests were to keep the price of coal as low as possible, and they were frequently able to depress the price materially by selling for future delivery, and then purchase of operators not in the Owners' Association, or induce some of the latter to sell at the price made.

This condition often led to difficulties, in the way of strikes, or stop days, on the part of the workmen, in order to restrict out-put, and thereby keep up the prices. In 1898 such a strike occurred, which after a time was settled by the workmen in forty-seven of the collieries agreeing to go to work upon wages fixed according to a sliding scale, and determined by a joint sliding scale committee, composed of twenty-four persons, twelve to be chosen by the forty-seven owners, and twelve by the workmen employed by these owners. The agreement provided that: "All notices to terminate contracts on the part of the employers, as well as employed, shall be given only on the first day of any calendar month, and to terminate on the last day of the same month." Although this agreement was made only between the forty-seven owners and their employees, the workmen in the other twenty-seven collieries resumed work on the same terms, but neither they nor the owners were represented in the sliding scale committee.

Soon afterward the South Wales Miners' Federation was organized, and nearly all the workmen in the seventy-four collieries became members; the federation chose officers, and an *executive council*, which was authorized, or resolved, to transact all the business pertaining to the workmen's half of the sliding scale committee. In 1900 it seemed likely the price of coal would go down, and the president of the executive council advised that a stop-day or holiday be taken by the workmen to restrict out-put. This was ordered by the executive council, and at a general conference of the workmen held on this holiday the federation, by resolution, authorized "the council to declare a general holiday at any time they might think it necessary for the protection of wages and of the industry generally." The owners met soon afterward, and resolved that "if the men make any future illegal stoppage, the owners will take proceedings against the men."

Nearly a year later, when a depression of prices was threatened, the officers of the federation advised that stop days be taken, but, in order to avoid the effect of the decision in the *Taff Vale Case* [1901], A. C. 426, holding the funds of such societies to answer in damages for their wrongful acts, also advised that such action should not be ordered by any of the representatives of the federation. An *executive council* meeting was held, at which twenty-two members, including ten of the workmen members of the *sliding scale committee*, were present. The matter was discussed, and a motion that "the *executive council should not declare a stop-day*," was carried by nineteen votes. Immediately thereafter, all of the council retired, except the ten *sliding scale committee members*, who declared four stop days, and sent notices and telegrams to the workmen in all the collieries, the costs of which were paid out of the federation funds. The reasons given were that: "Large contracts have already been made at considerably lower prices than the average . . . by the last sliding scale audit, and fearing the result . . . must of necessity mean a heavy reduction in wages, it was unanimously resolved" to order the stop days. The stop days were observed generally, and the workmen thereby broke their contracts with their employers.

By consent all questions of law and fact were left to the trial judge who found that the federation itself directed the observance of the stop days, but that its action and that of the other defendants were "dictated by an honest desire to forward the interest of the workmen, and was not in any sense prompted by a wish to injure the masters. . . . Having been requested by the men [at the conference in 1900] . . to advise and direct them, . . the defendants . . did to the best of their ability advise and direct . . them honestly and without malice of any kind against the plaintiffs," but knew that if this advice was followed, "it involved . . the breaking of subsisting contracts." The advice "was followed as the defendants wished it should be, and damage resulted to the masters." Suit was brought in the alternative, charging conspiracy also. The trial court (Bigham, J.), held there was no liability, because "in all the cases cited in which the action had been for damages for procuring the breach of a contract, *the element of actual malice—a real intention to harm the plaintiff*—had been regarded as essential;" also, "Here no such conspiracy ever in fact existed, for there never was any malicious intention," — [1903] 1 K. B. 118.

Held, by ROMER, L. J., and STIRLING, L. J., (VAUGHAN WILLIAMS, L. J. dissenting), overruling the decision of the trial court, that the defendants were liable: *Glamorgan Coal Co., Ltd., and others* v. *South Wales Miners' Federation and others* [1903], 2 K. B. 545.

L. JJ. WILLIAMS, ROMER, and STIRLING, all agree that Lord MACNAGHTEN'S statement in *Quinn* v. *Leathem* correctly announced the rule of law applicable, viz.: "A violation of a legal right committed knowingly is a cause of action, and it is a violation of legal right to interfere with contractual relations recognized by law, *if there be no sufficient justification for interference.*" All the judges, including the trial judge, found that the defendants had interfered between the plaintiffs and their workmen; but on the question, "Was there in law a sufficient justification for the interference?" the trial judge and WILLIAMS, L. J. answered, yes, because the relation of the defendants to the men raised a duty on their part to advise the men, or, at all

events, negatived their being intermeddlers, by giving advice in good faith.

L. JJ. ROMER and STIRLING answered this question, no, the former saying: "If A wants to get a specially good workman, who is under contract with B, as A knows, and A gets the workman to break his contract to B's injury, by giving him higher wages, it would not, in my opinion, afford A a defense to an action against him by B that he could establish he had no personal animus against B, and that it was both to the interest of himself and of the workman that the contract with B should be broken. I think the principle involved in this simple case . . really governs the present case. For it must be remembered that what A has to justify is his action, not as between him and the workman, but as regards the employer B." STIRLING, L. J., said "The justification set up seems to me to amount to no more than this—that the course which they [the defendants] took, although it might be to the detriment of the masters, was for the pecuniary interest of the men; and I think it wholly insufficient."

The case announces no new principle, but seems to clear up some difficulties surrounding the "malice" supposed to be necessary in such actions since the decision of *Lumley* v. *Gye* (1853), 2 El. & Bl. 216, and "maliciously inducing a breach of contract," becomes "knowingly inducing a breach of contract without just cause."

The history of the matter is interesting. The laws of Edward the Elder (*c.* 924), provided (10), "Let no man receive another man's man, without his leave. . . If any one do so let him make 'bot' my 'oferhyrnes',"—probably both damages and a fine.—STEARNS, GERMS AND DEVELOPMENTS, LAWS OF ENGLAND. If any similar right was recognized in the time of GLANVILLE (*c.* 1187), it must have been in the local courts, for he mentions nothing of the kind. The writ of *trespass* was not included in the Irish Register of 1227, and did not become a *writ of course*, until well into the reign of Henry III. (1216-1272). According to BRACTON (*c.* 1265), however, if a servant or others of a person's family had been struck or wounded, he who suffered the violence had a *direct* action for his own loss, and the lord had an *indirect* action for the insult, disgrace or loss of service, and failure to prosecute or prove, on the servants' part did not preclude the lord from doing so. —(f. 115). In BRITTON (*c.* 1290), it was provided that the plaintiffs "should not recover beyond the damages which they can reasonably show they have sustained by the loss of the services of their men, who have been beaten or imprisoned, or so treated as to be incapable of service. And their action shall not be brought until after conviction of the trespass committed against the servant." As early as 1349, (*Lib. Ass.* 22 Ed. III. pl. 76) it was held if a servant depart from the service of his master by reason of menaces of life or limb, the master has a right of action against the menacer. (See *Bigelow*, L. C. TORTS, p. 326 n.). The foregoing seem clearly to give actions for *violent* interference with existing *relations* of a domestic or feudal character, and not based upon contract. In 1350 the Statute of Laborers (23 Ed. III.) gave an action against those who received or retained the laborers, (hand-workers) of others, and in 1374 (*Y. B. 47 Ed. III.* f. 4, p. 13), it was said, "At common law, before the statute, if a man *took* my servant out of my service, I should have a writ of trespass." In 1410, an interesting case occurs (*Y. B. 11 Hen. IV.* f. 23 p. 462, Finlason's note to REEVES' HIST. ENG. LAW, vol III. p.

130), wherein plaintiff brought *trespass* and alleged that a servant *contracted* to serve him a full year, and that the defendant *procured* the servant to leave before the year was up. The defendant pleaded that *trespass* would not lie for *procuring* a servant to depart, for such a thing would not be "against the peace," though it was admitted that *procuring* was contrary to the statute. After plaintiff amended that the defendant *procured* and *took* (or seized, *prist*) the servant, the defendants answered the servant "was wandering, and offered his services, and we received him," and this issue went "to the country." One of the judges said that no action at common law lay against the servant for it is a contract without a *specialty*. The same judge said "if a man procure my ward to go from me," a writ of ravishment lies, "because the ward is a chattel." Two of the judges here agreed that the statute did not take away the common law action of trespass for forcibly taking a servant away from the service. In 1443 (Y. B. *21 Hen VI.* 31 pl. 18, BACON'S ABR., *Master and S.* (O.)) it is said "from the interest a master has in the laborer and service of his servant, he may maintain an action for enticing or taking him away." The Register of Writs (p. 102,—first printed in 1531) called the action *trespass*, and read "*by assaulting and beating, per quod*, etc." The writ given in FITZHERBERT, N. B. 167 B (*c.* 1538), seems to have been the same, but recites the statute, as if the action was founded upon that. BROOKE, (Abr., Lab. 21, *c.* 1568), however, says: "In trespass it was agreed that at common law if a man had *taken* my servant from me trespass lay *vi et armis;* but if he had procured the servant to depart and he retained him action lay not at common law *vi et armis*, but it lay upon the case upon the departure by procurement."

The same views were taken in *Norton* and *Jason's* case (1651) Style, 398; *Regina* v. *Daniel* (1704), Salk. 380, 2 Ld. Raym. 1116. And *actions on the case* for inducing or enticing manual laborers under contract to leave the service were allowed in *Adams and Bafeald's Case* (1591), 1 Leon. 240; *Valley* v. *Richmond*, (1603), Noy 105; *Hambleton* v. *Veere* (1750), 2 Saund. 169; *Queen* v. *Daniel* (1704), 6 Mod. 182; *Reaveley* v. *Mainwaring* (1762), 3 Burr. 1306; *Bird* v. *Randall* (1762), 3 Burr. 1345; *Hart* v. *Aldridge* (1774), Lofft. 493, Cowper 54, Ames Cas. Torts 584; *Gunter* v. *Astor* (1819), 4 Moore, 12; *Hartley* v. *Cummings* (1847), 5 C. B. (57 Eng. C. L.) 247.

These cases seem to have led Mr. Justice COLERIDGE in *Lumley* v. *Gye*, to think that an action would lie only for *procuring* a hand working servant to leave a service contrary to the statute of laborers, and no action at common law would lie except for forcibly taking such a servant out of the service, amounting to a trespass. The force of this contention made it necessary for the other three judges to give a somewhat different reason for their decisions, and this they seemed to find in *maliciously* causing the breach of the contract of Miss Wagner to sing at the plaintiff's theater. The case was on demurrer for "*maliciously inducing*, etc.," although the defendant had only offered to pay Miss Wagner more.

The question was made no clearer, but rather more confused, in the next case, *Bowen* v. *Hall* (1881), 6 Q. B. Div. 333, by *Sir William Brett*, afterward *Lord Esher*, making *maliciously*, equivalent to "an *indirect purpose of injuring the plaintiff or benefiting the defendant;*" this view he reiterated in dissenting, in *Mogul Steamship Co.* v. *MacGregor* (1889), 23 Q. B.

Div. 598, and in his decisions in *Temperton* v. *Russell* [1893], 1 Q. B. 715; and in *Flood* v. *Jackson* [1895], 2 Q. B. 21, he held that "malice makes that unlawful, which would otherwise be lawful." In the *Mogul* case, in the court of appeal, Sir Charles Bowen, had taken the view that intentionally doing damage (by inducing breach of contract or otherwise), "*without just cause or excuse*" *is actionable;* and this seemed to be the view of the House of Lords in affirming the decision [1892], A. C. 25. When *Flood* v. *Jackson*, under the title of *Allen* v. *Flood* [1898], A. C. 1, was taken to the House of Lords, opportunity was given to pass upon the effect of *malice*, and, although with an extraordinary conflict of view, that case is supposed to hold that an act otherwise legal does not become wrongful because it is malicious, or was done with an intent to injure plaintiff or benefit the defendant. (See 1 MICHIGAN LAW REVIEW, p. 28, for criticism.) Considerable doubt was thrown on *Lumley* v. *Gye*, and *Temperton* v. *Russell*, though they were not overruled. When *Quinn* v. *Leathem* [1901], A. C. 495, came before the House of Lords, it became necessary to determine whether it was actionable for a combination of persons to induce, by threats of a strike, one person to discontinue dealing with another with whom there was no definite contract relation. It was unanimously held to be so, where the combination were "without justification or excuse,"—but a "*malicious* purpose to injure through the combination" played an important part in the opinion of several of the judges,—and *Lumley* v. *Gye* was followed, *Temperton* v. *Russell* approved, and *Allen* v. *Flood*, explained. In *Read* v. *Friendly Society*, etc. [1902], 2 K. B. 732, *Collins*, *M. R.* says that "persuasion by an individual for the purpose of depriving another person of the benefit of a contract if effectual, to bring about a breach of the contract to the damage of that person, gives a cause of action; *Lumley* v. *Gye*; and a strong belief on the part of the persuader that he is acting in his own interests does not seem to me to improve his position in any respect."

The American cases are not altogether in harmony and are too numerous for review here, but it is generally held that *maliciously* (which perhaps means only "without just cause or excuse") to induce one to break a definite contract of service is actionable: *Burgess* v. *Carpenter* (1870), 2 S. C. 7, 16 Am. R. 643 (only in case of menial services); *Carew* v. *Rutherford* (1870), 106 Mass. 1, 8 Am. R. 287; *Walker* v. *Cronin* (1871), 107 Mass. 555, Big. Cas. Torts, 102, Ames Cas. Torts, 694; *Jones* v. *Blocker* (1871), 43 Ga. 331; *Haskins* v. *Royster* (1874), 70 N. C. 601, 16 Am. R. 780; *Daniel* v. *Swearengen* (1875), 6 S. C. 297, 24 Am. R. 471; *Bixby* v. *Dunlap* (1876), 56 N. H. 456, 22 Am. R. 475; *Jones* v. *Stanley* (1877), 76 N. C. 355; *Huff* v. *Watkins* (1880), 15 S. C. 82, 40 Am. R. 680; *Dickinsou* v. *Dickinson* (1881), 33 La. Ann. 1244; *St. Johnsbury, etc. R. R.* v. *Hunt* (1882), 55 Vt. 570, 45 Am. R. 639; *Chipley* v. *Atkinson* (1887), 23 Fla. 206, 11 Am. St. R. 367; *Van Horn* v. *Van Horn* (1890), 52 N. J. L. 284, 10 L. R. A. 184, 21 Atl. 1089; *Augle* v. *Chicago & St. Paul, etc. Ry. Co.* (1893), 151 U. S. 1; *Lucke* v. *Clothing Cutters*, etc. (1893), 77 Md. 396, 39 Am. St. R. 421, 19 L. R. A. 408, 26 Atl. 550; *Doremus* v. *Hennessy* (1898), 176 Ill. 608, 68 Am. St. R. 203, 52 N. E. 924; *Plant* v. *Woods* (1900), 176 Mass. 492, 79 Am. St. R. 330, 57 N. E. 1011; *Moran* v. *Dunphy* (1901), 177 Mass. 485, 83 Am. St. R. 289, 52 L. R. A. 115, 59 N. E. 125; *Flaccus* v. *Smith* (1901), 199 Pa. St. 128, 85 Am. St. R. 779, 48 Atl. 894;

West Virginia Trans. Co. v. *Standard Oil Co.* (1902), 50 W. Va. 611, 88 Am. St. R. 895, 40 S. E. 591; *Frank* v. *Herold* (1902), 63 N. J. Eq. 443, 52 Atl. 152.

There are several cases to the contrary, however: *Ashley* v. *Dixon* (1872), 48 N. Y. 430, 8 Am. R. 559 (not a contract of service); *Chambers* v. *Baldwin* (1891), 91 Ky. 121, 34 Am. St. R. 165, 11 L. R. A. 545, 15 S. W. 57; *Boulier* v. *Macauley* (1891), 91 Ky. 135, 34 Am. St. R. 171, 11 L. R. A. 550, 15 S. W. 60; *Boyse* v. *Thorn* (1893), 98 Cal. 578, 21 L. R. A. 233, 33 Pac. 492, Bur. Cas. Torts 492; *Raycroft* v. *Tayntor* (1896), 68 Vt. 219, 54 Am. St. R. 882, 33 L. R. A. 225, 35 Atl. 53; *Glencoe Land & Gravel Co.* v. *Commission Co.* (1897), 138 Mo. 439, 40 S. W. 93; *Baker* v. *Metropolitan Life Ins. Co.* (1901), — Ky. —, 55 L. R. A. 271, 64 S. W. 913; *Brown Hardware Co.* v. *Indiana Stove Works* (1903), — Tex. —, 73 S. W. 800. Many of these cases, however, recognize a right of action if slander, fraud, force, threats or coercion of any kind be used.

RECENT IMPORTANT DECISIONS

ACTION TO QUIET TITLE—VENUE—CHANGE OF VENUE.—B corporation sues C corporation for damages because the defendant has filled up a canal which the plaintiff had constructed and was maintaining over a tract of land belonging to the defendant. The action having been brought in the superior court for the county of San Francisco the defendant moved that the case be transferred to the superior court of Kern county, where the land is situated, since by section 5, article 6 of the California Constitution "all actions for quieting title, etc., etc., to real estate shall be commenced in the county in which the real estate is situated." *Held*, that the action, being simply to recover damages, was rightly commenced in the court of San Francisco. *Miller, et al.* v. *Kern County Land Company* (1903), — Cal. — 73 Pac. Rep. 837.

This is not the first time such questions have come up for decision in this court and, heretofore, it has been held that, if the complaint discloses that the effect of a judgment would be to quiet title to the property in controversy, section 5, article 6 of the Constitution should govern. The following cases are to this effect, and it appears contrary to the decision of this court. *Fritts* v. *Canif*, 94 Cal. 393; *Pacific Yacht Club* v. *Sansalito*, 98 Cal. 487; *Staadse* v. *Bell*, 125 Cal. 309.

AGENCY—SECRET COMMISSION—RECOVERY OF BOTH SECRET AND STIPULATED COMMISSION.—The plaintiff employed the defendants to sell certain property belonging to the plaintiff. The defendants effected the sale and received their stipulated commission from the plaintiff. The defendants also received a secret compensation from the purchasers. On learning of this secret commission, the plaintiff sued the defendants for the amount of such commission and recovered. In this action to recover the stipulated commission paid by plaintiff to defendants. *Held*, the plaintiff could recover. *Andrew* v. *Ramsay & Co.* [1903], 72 L. J K. B. 865.

The defendants contended that the action for and recovery of the secret commission was a ratification of the sale and that as the services of the